



## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2022-0051]

### National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Notice of FY 2024 Arrangement

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

---

**SUMMARY:** The Federal Emergency Management Agency announces the Fiscal Year 2024 Financial Assistance/Subsidy Arrangement for private property insurers interested in participating in the National Flood Insurance Program's Write Your Own Program.

**DATES:** Interested insurers must submit intent to subscribe or re-subscribe to the Arrangement by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Sarah Devaney Ice, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 320-5577 (phone); or [sarah.devaney-ice@fema.dhs.gov](mailto:sarah.devaney-ice@fema.dhs.gov) (email).

### SUPPLEMENTARY INFORMATION:

#### I. Background

The National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*) authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase flood insurance. *See* 42 U.S.C. 4011(a). Under the NFIA, FEMA may use insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations as fiscal agents of the United States to help it carry out the NFIP. *See* 42 U.S.C. 4071. To this end, FEMA may “enter into any contracts, agreements, or other appropriate arrangements” with private

insurance companies to use their facilities and services in administering the NFIP on such terms and conditions as they agree upon. *See* 42 U.S.C. 4081(a).

Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as Write Your Own (WYO) companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the Standard Flood Insurance Policy (SFIP). Each Arrangement entered into by a WYO company must be in the form and substance of the standard Arrangement, a copy of which is published in the *Federal Register* annually, at least 6 months prior to becoming effective. *See* 44 CFR 62.23(a). To learn more about FEMA's WYO Program, please visit <https://nfipservices.floodsmart.gov/write-your-own-program>.

## **II. Notice of Availability**

Insurers interested in participating in the WYO Program for Fiscal Year 2024 must contact Sarah Devaney Ice at [sarah.devaney-ice@fema.dhs.gov](mailto:sarah.devaney-ice@fema.dhs.gov) by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Prior participation in the WYO Program does not guarantee FEMA will approve continued participation. FEMA will evaluate requests to participate in light of publicly available information, industry performance data, and other criteria listed in 44 CFR 62.24 and the FY 2024 Arrangement, copied below. FEMA encourages private insurance companies to supplement this information with customer satisfaction surveys, industry awards or recognition, or other objective performance data. In addition, private insurance companies should work with their vendors and subcontractors involved in servicing and delivering their insurance lines to ensure FEMA receives the information necessary to effectively evaluate the criteria set forth in its regulations.

FEMA will send a copy of the offer for the FY 2024 Arrangement, together with related materials and submission instructions, to all private insurance companies successfully evaluated by the NFIP. If FEMA, after conducting its evaluation, chooses not to renew a Company's participation, FEMA, at its option, may require the continued performance of all or selected

elements of the FY 2023 Arrangement for a period required for orderly transfer or cessation of the business and settlement of accounts, not to exceed 18 months. *See* FY 2023 Arrangement, Article II.D. All evaluations, whether successful or unsuccessful, will inform both an overall assessment of the WYO Program and any potential changes FEMA may consider regarding the Arrangement in future fiscal years.

Any private insurance company with questions may contact FEMA at: Sarah Devaney Ice, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 320-5577 (phone); or [sarah.devaney-ice@fema.dhs.gov](mailto:sarah.devaney-ice@fema.dhs.gov) (email).

### **III. Fiscal Year 2024 Arrangement**

Pursuant to 44 CFR 62.23(a), FEMA must publish the Arrangement at least six months prior to the Arrangement becoming effective. The FY 2024 Arrangement provided below is substantially similar to the previous year's Arrangement, but includes the following substantive changes:

1. In Article III.A (Undertakings of the Company), under Operations Plan, FEMA is requiring WYO companies to submit a Policy Retention Plan, describing the Company's efforts and methods to retain and renew policies to better inform FEMA on how WYO companies communicate with policyholders and support policy retention.
2. In Article III.A (Undertakings of the Company), under subsection (5) (Operations Plan), FEMA is redesignating subsections (c)-(h) as (d)-(i) because it has added a new requirement of a Policy Retention Plan under (c). Aside from the addition of a Policy Retention Plan, FEMA is not making any other substantive changes to its requirement that WYO companies submit an Operations Plan within ninety calendar days of the commencement of this Arrangement.
3. In Article IV.C (Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds), FEMA is removing "geographic area" from its determination of alternative Adjuster Fee Schedules to better ensure that adjuster resources are available throughout the Nation

following a catastrophic flood. Alternative Adjuster Fee schedules for the FY 2024

Arrangement will now be based solely on losses incurred during a specified time frame.

4. In Article IV.D (Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds), FEMA is requiring WYO companies to comply with the NFIP Litigation Manual in both its conduct and oversight of litigation. To the extent that the manual does not address specific issues, FEMA is directing WYO companies to continue to follow their own customary business practices for other lines of insurance not sold under the Arrangement.
5. In Article IV.D (Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds), FEMA is removing the requirement that WYO companies comply with their customary business practices in the oversight of litigation because this subsection (IV.D.3.d) is now addressed in IV.D.3.b, discussed above.

The Fiscal Year 2024 Arrangement reads as follows:

## **Financial Assistance/Subsidy Arrangement**

### **Article I. General Provisions**

- A. Parties. The parties to the Financial Assistance/ Subsidy Arrangement are the Federal Emergency Management Agency (FEMA) and the Company.
- B. Purpose. The purpose of this Financial Assistance/Subsidy Arrangement is to authorize the Company to sell and service flood insurance policies made available through the National Flood Insurance Program (NFIP) and adjust and pay claims arising under such policies as fiscal agents of the Federal Government.
- C. Authority. This Financial Assistance/ Subsidy Arrangement is authorized under the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*), and in particular, section 1345(a) of the NFIA (42 U.S.C. 4081(a)), as implemented by 44 CFR 62.23 and 62.24.

### **Article II. Commencement and Termination**

- A. The effective period of this Arrangement begins on October 1, 2023, and terminates no

earlier than September 30, 2024, subject to extension pursuant to Articles II.D and II.H.

FEMA may provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting, and eligibility rules.

- B. Pursuant to 44 CFR 62.23(a), FEMA will publish the Arrangement and the terms for subscription or re-subscription for Fiscal Year 2025 in the *Federal Register* no later than April 1, 2024. Upon such publication, the Company must notify FEMA of its intent to re-subscribe or not re-subscribe to the WYO Program for the following term within ninety (90) calendar days.
- C. Requesting Participation in WYO Program. Insurers interested in participating in the WYO Program, who have never participated in the program, or who are returning to the program after a period of non-participation, must submit a written request to participate.
  - 1. Participation is then contingent on submission of both:
    - a. A completed application package, the requirements and contents of which FEMA will outline in its written response to the request to participate.
    - b. A completed operations plan, whose requirements and contents are outlined at Article III.A.5 of this Arrangement.
  - 2. Insurers who are already participating in the program must submit their operations plan within ninety (90) days as outlined in Article III.A.5 of this Arrangement.
- D. In addition to the requirements of Article II.B, in order to ensure uninterrupted service to policyholders, the Company must notify FEMA within thirty (30) calendar days of when the Company elects not to re-subscribe to the WYO Program during the term of this Arrangement. If so notified, or if FEMA chooses not to renew the Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of this Arrangement for the period required for orderly transfer or cessation of business and settlement of accounts, not to exceed eighteen (18) months after the end of this Arrangement

(September 30, 2024), and may either require transfer of activities to FEMA under Article

II.D.1 or allow transfer of activities to another WYO company under Article II.D.2:

1. FEMA may require the Company to transfer all activities under this Arrangement to FEMA. Within thirty (30) calendar days of FEMA's election of this option, the Company must deliver to FEMA the following:
  - a. A plan for the orderly transfer to FEMA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance.
  - b. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FEMA, in a standard format and medium.
  - c. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company must provide FEMA with a report showing, on a policy basis, any amounts due from or payable to policyholders, agents, brokers, and others as of the transition date.
  - d. All funds in its possession with respect to any policies transferred to FEMA for administration and the unearned expenses retained by the Company.
  - e. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.
2. Within ninety (90) calendar days of receiving the Company's data and supporting documentation, FEMA will notify the Company of the date that FEMA will complete the transfer.
3. FEMA may allow the Company to transfer all activities under this Arrangement to one or more other WYO companies. Prior to commencing such transfer, the

Company must submit, and FEMA must approve, a formal request. Such request must include the following:

- a. An assurance of uninterrupted service to policyholders.
- b. A detailed transfer plan providing for either: (1) the renewal of the Company's NFIP policies by one or more other WYO companies; or (2) the transfer of the Company's NFIP policies to one or more other WYO companies.
- c. A description of who the responsible party will be for liabilities relating to losses incurred by the Company in this or preceding Arrangement years.
- d. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.

E. Cancellation by FEMA.

- 1. FEMA may cancel financial assistance under this Arrangement in its entirety upon thirty (30) calendar days written notice to the Company stating one or more of the following reasons for such cancellation:
  - a. Fraud or misrepresentation by the Company subsequent to the inception of the Arrangement.
  - b. Nonpayment to FEMA of any amount due.
  - c. Material failure to comply with the requirements of this Arrangement or with the written standards, procedures, or guidance issued by FEMA relating to the NFIP and applicable to the Company.
  - d. Failure to maintain compliance with WYO company participation criteria at 44 CFR 62.24.
  - e. Any other cause so serious or compelling a nature that affects the Company's present responsibility.

2. If FEMA cancels this Arrangement pursuant to Article II.E.1, FEMA may require the transfer of administrative responsibilities and the transfer of data and records as provided in Article II.D.1.a-d. If transfer is required, the Company must remit to FEMA the unearned expenses retained by the Company. In such event, FEMA will assume all obligations and liabilities owed to policyholders under such policies, arising before and after the date of transfer.

3. As an alternative to the transfer of the policies to FEMA pursuant to Article II.E.2, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided in Article II.D.3.

F. In the event that the Company is unable or otherwise fails to carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any jurisdiction to which the Company is subject, including but not limited to being placed in receivership or run-off status by a State Department of Insurance, the Company agrees to transfer, and FEMA will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event FEMA will assume all obligations and liabilities within the scope of the Arrangement owed to policyholders arising before and after the date of transfer, and the Company will immediately transfer to FEMA all needed records and data and all funds in its possession with respect to all such policies transferred and the unearned expenses retained by the Company. As an alternative to the transfer of the policies to FEMA, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided by Article II.D.3. The Company shall immediately notify FEMA if:

1. An independent financial rating company downgrades its financial strength during its period of performance under this Arrangement; or
2. It receives a State department of insurance order or directive making it unable to



carry out its obligations under this Arrangement, including but not limited to being placed in receivership or run-off status by a State department of insurance.

- G. In the event the Act is amended, repealed, expires, or if FEMA is otherwise without authority to continue the Program, FEMA may cancel financial assistance under this Arrangement for any new or renewal business, but the Arrangement will continue for policies in force that shall be allowed to run their term under the Arrangement.
- H. If FEMA does not publish the Fiscal Year 2025 Arrangement in the *Federal Register* on or before April 1, 2024, then FEMA may require the continued performance of all or selected elements of this Arrangement through December 31, 2025, but such extension may not exceed the expiration of the six (6) month period following publication of the Fiscal Year 2025 Arrangement in the *Federal Register*.

### **Article III. Undertakings of the Company**

#### **A. Responsibilities of the Company.**

1. Policy Issuance and Maintenance. The Company must meet all requirements of the Financial Control Plan and any guidance issued by FEMA. The Company is responsible for the following:
  - a. Compliance with Rating Procedures.
  - b. Eligibility Determinations.
  - c. Policy Issuances.
  - d. Policy Endorsements.
  - e. Policy Cancellations.
  - f. Policy Correspondence.
  - g. Payment of Agents' Commissions.
  - h. Fund management, including the receipt, recording, disbursement, and timely deposit of NFIP funds.
2. The Company must provide a live customer service agent that (1) is accessible to all

policyholders via telephone during business days, and (2) can resolve commonplace customer service issues.

3. Claims Processing.

- a. In general. The Company must process all claims consistent with the Standard Flood Insurance Policy, Financial Control Plan, Claims Manual, other guidance adopted by FEMA, and as much as possible, with the Company's standard business practices for its non-NFIP policies.
- b. Adjuster registration. The Company may not use an independent adjuster to adjust a claim unless the independent adjuster:
  - i. Holds a valid Flood Control Number issued by FEMA; or
  - ii. Participates in the Flood Adjuster Capacity Program.
- c. Claim reinspections. The Company must cooperate with any claim reinspection by FEMA.

4. Reports. The Company must certify its business under the WYO Program through monthly financial reports in accordance with the requirements of the Pivot Use Procedures. The Company must follow the Financial Control Plan and the WYO Accounting Procedures Manual. FEMA will validate and audit, in detail, these data and compare the results against Company reports.

5. Operations Plan. Within ninety (90) calendar days of the commencement of this Arrangement, the Company must submit a written Operations Plan to FEMA describing its efforts to perform under this Arrangement. The plan must include the following:

- a. Private Flood Insurance Separation Plan. If applicable, a description of the Company's policies, procedures, and practices separating their NFIP flood insurance lines of business from their non-NFIP flood insurance lines of business, including its implementation of Article III.E.

- b. Marketing Plan. A marketing plan describing the Company's forecasted growth, efforts to achieve that growth, and ability to comply with any marketing guidelines provided by FEMA.
- c. Policy Retention Plan. A retention plan describing the Company's efforts to retain and renew policies and methods of communicating with policyholders on renewals.
- d. Customer Service Plan. A description of overall customer service practices, including ongoing and planned improvement efforts.
- e. Distribution Plan. A description of the Company's NFIP flood insurance distribution network, including anticipated numbers of agents, efforts to train those agents, and an average rate of commissions paid to producers by state.
- f. Catastrophic Claims Handling Plan. A catastrophic claims handling plan describing how the Company will respond and maintain service standards in catastrophic flood events, including:
  - i. Deploying mobile or temporary claims centers to provide immediate policyholder assistance, including submission of notice of loss and claim status information.
  - ii. Preparing people, processes, and tools for claims processing in remote work scenarios.
  - iii. Preparing communications in advance for readiness throughout the year including a suite of printed and digital materials (e.g., advertisements, educational materials, social media messaging, website blogs and announcements) that provide key messaging to stakeholders, including policyholders, agents, and the public following a catastrophic flood event.
  - iv. Identifying the core areas of information technology that need to be

scaled pre-event or are scalable post-event.

- g. Business Continuity Plan. A business continuity plan identifying threats and risks facing the Company's NFIP-related operations and how the Company will maintain operations in the event of a disaster affecting its operational capabilities.
- h. Privacy Protection Plan. A privacy protection plan that describes the Company's standards for using and maintaining personally identifiable information.
- i. System Security Plan. A system security plan that describes system boundaries, system environments of operation, how security requirements are implemented, and the relationships with or connections to other systems, including plans of action that describe how unimplemented security requirements will be met and how any planned mitigations will be implemented, prepared in accordance with either:
  - i. National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations", Revision 2, <https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final>; or
  - ii. Another comparable standard deemed acceptable by FEMA.

B. Time Standards. WYO companies must meet the time standards provided below. Time will be measured from the date of receipt through the date the task is completed. In addition to the standards set forth below, all functions performed by the Company must be in accordance with the highest reasonably attainable quality standards generally used in the insurance and data processing field. Applicable time standards are:

1. Application Processing – fifteen (15) business days (Note: if the policy cannot be

- sent due to insufficient or erroneous information or insufficient funds, the Company must send a request for correction or added moneys within ten (10) business days.
2. Renewal processing – seven (7) business days.
  3. Endorsement processing – fifteen (15) business days.
  4. Cancellation processing – fifteen (15) business days.
  5. File examination – seven (7) business days from the day the Company receives the final report.
  6. Claims draft processing – seven (7) business days from completion of file examination.
  7. Claims adjustment – forty-five (45) calendar days average from the receipt of Notice of Loss (or equivalent) through completion of examination.
  8. Upload transactions to Pivot – one (1) business day.

C. Policy Issuance.

1. The flood insurance subject to this Arrangement must be only that insurance written by the Company in its own name pursuant to the Act.
2. The Company must issue policies under the regulations prescribed by FEMA, in accordance with the Act, on a form approved by FEMA.
3. The Company must issue all policies in consideration of such premiums and upon such terms and conditions and in such states or areas or subdivisions thereof as may be designated by FEMA and only where the Company is licensed by State law to engage in the property insurance business.

D. Lapse of Authority or Appropriation. FEMA may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the NFIP is withdrawn.

E. Separation of Finances and Other Lines of Flood Insurance.

1. The Company must separate Federal flood insurance funds from all other Company

accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article IV. The Company must remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

2. Other Undertakings of the Company.

- a. Clear communication. If the Company also offers insurance policies covering the peril of flood outside of the NFIP in any geographic area in which Program authorizes the purchase of flood insurance, the Company must ensure that all public communications (whether written, recorded, electronic, or other) regarding non-NFIP insurance lines would not lead a reasonable person to believe that the NFIP, FEMA, or the Federal Government in any way endorses, sponsors, oversees, regulates, or otherwise has any connection with the non-NFIP insurance line. The Company may assure compliance with this requirement by prominently including in such communications the following statement: "This insurance product is not affiliated with the National Flood Insurance Program."
- b. Data protection. The company may not use non-public data, information, or resources obtained in course of executing this Arrangement to further or support any activities outside the scope of this Arrangement.

F. Claims. The Company must investigate, adjust, settle, and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company bind FEMA, subject to appeal.

G. Compliance with Agency Standards and Guidelines.

1. The Company must comply with the Act, regulations, written standards, procedures, and guidance issued by FEMA relating to the NFIP and applicable to the Company,

including, but not limited to the following:

- a. WYO Program Financial Control Plan.
  - b. Pivot Use Procedures.
  - c. NFIP Flood Insurance Manual.
  - d. NFIP Claims Manual.
  - e. NFIP Litigation Manual.
  - f. WYO Accounting Procedures Manual.
  - g. WYO Bulletins.
2. The Company must market flood insurance policies in a manner consistent with marketing guidelines established by FEMA.
3. FEMA may require the Company to collect customer service information to monitor and improve their program delivery.
4. The Company must notify its agents of the requirement to comply with State regulations regarding flood insurance agent education, notify agents of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs.

#### H. Compliance with Appeals Process.

1. In general. FEMA will notify the Company when a policyholder files an appeal. After notification, the Company must provide FEMA the following information:
  - a. All records created or maintained pursuant to this Arrangement requested by FEMA.
  - b. A comprehensive claim file synopsis, redacted of personally identifiable information, that includes a summary of the appeal issues, the Company's position on each issue, and any additional relevant information. If, in the process of writing the synopsis, the Company determines that it can address the issue raised by the policyholder on appeal without further direction, it

must notify FEMA. The Company will then work directly with the policyholder to achieve resolution and update FEMA upon completion.

The Company may have a claims examiner review the file who is independent from the original decision and who possesses the authority to overturn the original decision if the facts support it.

2. Cooperation. The Company must cooperate with FEMA throughout the appeal process until final resolution. This includes adhering to any written appeals guidance issued by FEMA.
3. Resolution of Appeals. FEMA will close an appeal when:
  - a. FEMA upholds the denial by the Company.
  - b. FEMA overturns the denial by the Company and all necessary actions that follow are completed.
  - c. The Company independently resolves the issue raised by the policyholder without further direction.
  - d. The policyholder voluntarily withdraws the appeal.
  - e. The policyholder files litigation.
4. Processing of Additional Payments from Appeal. The Company must follow established NFIP adjusting practices and claim handling procedures for appeals that result in additional payment to a policyholder when FEMA does not explicitly direct such payment during the review of the appeal.
5. Time Standards.
  - a. Provide FEMA with requested files pursuant to Article III.H.1.a – ten (10) business days after request.
  - b. Provide FEMA with comprehensive claim file synopsis pursuant to Article III.H.1.b – ten (10) business days after request.
  - c. Responding to inquiries from FEMA regarding an appeal – ten (10) business



days after inquiry.

- d. Inform FEMA of any litigation filed by a policyholder with a current appeal – ten (10) business days of notice.

I. Subrogation.

1. In general. Consistent with Federal law and guidance, the Company must use its customary business practices when pursuing subrogation.
2. Referral to FEMA. Pursuant to 44 CFR 62.23(i)(8), in lieu of the Company pursuing a subrogation claim, WYO companies may refer such claims to FEMA.
3. Notification. No more than ten (10) calendar days after either the Company identifies a possible subrogation claim or FEMA notifies the Company of a possible subrogation claim, the Company must notify FEMA of its intent to pursue the claim or refer the claim to FEMA.
4. Cooperation. Pursuant to 44 CFR 62.23(i)(11), the Company must extend reasonable cooperation to FEMA's Office of the Chief Counsel on matters related to subrogation.

- J. Access to Records. The Company must furnish to FEMA such summaries and analysis of information including claim file information and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the Act, in such form as FEMA, in cooperation with the Company, will prescribe.

- K. System for Award Management (SAM). The Company must be registered in the System for Award Management. Such registration must have an active status during the period of performance under this Arrangement. The Company must ensure that its SAM registration is accurate and up to date.

L. Cybersecurity.

1. In general. Unless the Company uses a compliance alternative pursuant to Article III.L.2, the Company must implement the security requirements specified by National

Institute of Standards and Technology (NIST) Special Publication (SP) 800-171

“Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations”, Revision 2 (<https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final>) for any system that processes, stores, or transmits information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, this Arrangement, or other applicable requirements, including information protected pursuant to Article XII.C and personally identifiable information of NFIP applicants and policyholders. Such implementation must be validated by a third-party assessment organization.

2. Compliance alternatives. In lieu of compliance with Article IV.L.1, the

Company may either:

a. Provide FEMA with documentation that the Company is securing the systems subject to the requirements of Article III.L.1 with either:

- i. ISO/IEC 27001, <https://www.iso.org/isoiec-27001-information-security.html>;
- ii. NIST Cybersecurity Framework, <https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final>;
- iii. Cybersecurity Maturity Model Certification (CMMC 2.0), <https://dodcio.defense.gov/CMMC/>;
- iv. Service and Organization Controls (SOC) 2, <https://www.aicpa.org/interestareas/frc/assuranceadvisoryservices/sorhome.html>; or
- v. Another comparable standard deemed acceptable by FEMA.

b. Provide a plan of action that describes how unimplemented security requirements of NIST SP 800-171, rev. 2, (<https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final>) will be met

and how any planned mitigations will be implemented as part of the system security plan required under Article III.A.4.h.

**Article IV. Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds**

- A. The Company is liable for operating, administrative, and production expenses, including any State premium taxes, dividends, agents' commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as municipal or county premium taxes, surcharges on flood insurance premium, and guaranty fund assessments.
- B. Payment for Selling and Servicing Policies.

1. Operating and Administrative Expenses. The Company may withhold, as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating, and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Article IV.C. This amount will equal the sum of the average industry expenses ratios for "Other Act.", "Gen. Exp." And "Taxes" calculated by aggregating premiums and expense amounts for each of five property coverages using direct premium and expense information to derive weighted average expense ratios. For this purpose, FEMA will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's Aggregates and Averages for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion).
2. Agent Compensation. The Company may retain fifteen (15) percent of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet the commissions or salaries of insurance agents,

brokers, or other entities producing qualified flood insurance applications and other related expenses.

3. Growth Bonus. FEMA may increase the amount of expense allowance retained by the Company depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article III.G.2. The total growth bonuses paid to companies pursuant to this Arrangement may not exceed two (2) percent of the aggregate net written premium collected by all WYO companies. FEMA will pay the Company the amount of any increase after the end of the Arrangement year.

C. FEMA will reimburse Loss Adjustment Expenses as follows:

1. FEMA will reimburse unallocated loss adjustment expenses to the Company pursuant to a “ULAE Schedule” coordinated with the Company and provided by FEMA.
2. FEMA will reimburse allocated loss adjustment expenses to the Company pursuant to a “Fee Schedule” coordinated with the Company and provided by FEMA. To ensure the availability of qualified insurance adjusters during catastrophic flood events, FEMA may, in its sole discretion, temporarily authorize the use of an alternative Fee Schedule with increased amounts during the term of this Arrangement for losses incurred during a time frame established by FEMA.
3. FEMA will reimburse special allocated loss expenses and subrogation expenses reimbursable under 44 CFR 62.23(i)(8) to the Company in accordance with guidelines issued by FEMA.

D. Loss Payments.

1. The Company must make loss payments for flood insurance policies from federal funds retained in the bank account(s) established under Article III.E.1 and, if such funds are depleted, from Federal funds withdrawn from the National Flood Insurance Fund pursuant to Article V.

2. Loss payments include payments because of litigation that arises under the scope of this Arrangement, and the Authorities set forth herein. All such loss payments and related expenses must meet the documentation requirements of the Financial Control Plan and of this Arrangement, and the Company must comply with the litigation documentation and notification requirements established by FEMA. Failure to meet these requirements may result in FEMA's decision not to provide reimbursement.

3. Oversight of Litigation.

- a. Any litigation resulting from, related to, or arising from the Company's compliance with the written standards, procedures, and guidance issued by FEMA arises under the National Flood Insurance Act of 1968 or regulations, and such legal issues raise a Federal question.
- b. The Company must conduct and oversee litigation arising out of the Company's participation in the NFIP in accordance with the National Flood Insurance Program Litigation Manual. If not addressed by the NFIP Litigation Manual, the Company should utilize its customary business practices for its defense of property and casualty litigation, including billing rates and standards.
- c. FEMA will not reimburse the Company for any award or judgment for damages and any costs to defend litigation that is either:
  - i. Grounded in actions by the Company that are significantly outside the scope of this Arrangement; or
  - ii. Involves issues of agent negligence.

E. Refunds. The Company must make premium refunds required by FEMA to applicants and policyholders from Federal flood insurance funds referred to in Article III.E.1, and, if such funds are depleted, from funds derived by withdrawing from the National Flood Insurance Fund pursuant to Article V. The Company may not refund any premium to

applicants or policyholders in any manner other than as specified by FEMA since flood insurance premiums are funds of the Federal Government.

F. Suspension and Debarment.

1. In general. The Company may not contract with or employ any person who is suspended or debarred from participating in federal transactions pursuant to 2 CFR part 180 (covering federal nonprocurement transactions) or 48 CFR part 9, subpart 9.4 (covering federal procurement transactions) in relation to this Arrangement.
2. Reimbursement. FEMA will not reimburse the company for any expenses incurred in violation of Article IV.F.1.
3. Compliance. The Company may ensure compliance with Article IV.F.1 by:
  - a. Checking the System for Awards Management at sam.gov;
  - b. Collecting a certification from that person; or
  - c. Adding a clause or condition to the transaction with that person.

**Article V. Undertakings of the Government**

A. FEMA must enable the Company to withdraw funds from the National Flood Insurance Fund daily, if needed, pursuant to prescribed procedures implemented by FEMA. FEMA will increase the amounts of the authorizations as necessary to meet the obligations of the Company under Article IV.C-E. The Company may only request funds when net premium income has been depleted. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable expenses. Request for payment may not ordinarily be drawn more frequently than daily. The Company may withdraw funds from the National Flood Insurance Fund for any of the following reasons:

1. Payment of claims, as described in Article IV.D.
2. Refunds to applicants and policyholders for insurance premium overpayment, or if

- the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund, as described in Article IV.E.
3. Allocated and unallocated loss adjustment expenses, as described in Article IV.C.
- B. FEMA must provide technical assistance to the Company as follows:
1. NFIP policy and history.
  2. Clarification of underwriting, coverage, and claims handling.
  3. Other assistance as needed.
- C. FEMA must provide the Company with a copy of all formal written appeal decisions conducted in accordance with Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264 and 44 CFR 62.20.
- D. Prior to the end of the Arrangement period, FEMA may provide the Company a statistical summary of their performance during the signed Arrangement period. This summary will detail the Company's performance individually, as well as compare the Company's performance to the aggregate performance of all WYO companies and the NFIP Direct Servicing Agent.

#### **Article VI. Cash Management and Accounting**

- A. FEMA must make available to the Company during the entire term of this Arrangement the ability to withdraw funds from the National Flood Insurance Fund provided for in Article V. The Company may withdraw funds from the National Flood Insurance Fund for reimbursement of its expenses as set forth in Article V.A that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw. In the event that adequate funding is not available to meet current Company obligations for flood policy claim payments issued, FEMA must direct the Company to immediately suspend the issuance of loss payments until such time as adequate funds are available. The Company is not required to pay claims from their own funds in the event of such suspension.

- B. The Company must remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by FEMA.
- C. In the event the Company elects not to participate in the Program in this or any subsequent fiscal year, or is otherwise unable or not permitted to participate, the Company and FEMA must make a provisional settlement of all amounts due or owing within three (3) months of the expiration or termination of this Arrangement. This settlement must include net premiums collected, funds withdrawn from the National Flood Insurance Fund, and reserves for outstanding claims. The Company and FEMA agree to make a final settlement, subject to audit, of accounts for all obligations arising from this Arrangement within eighteen (18) months of its expiration or termination, except for contingent liabilities that must be listed by the Company. At the time of final settlement, the balance, if any, due FEMA or the Company must be remitted by the other immediately and the operating year under this Arrangement must be closed.
- D. Upon FEMA's request, the Company must provide FEMA with a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.
- E. The Company must comply with the requirements of the False Claims Act (41 U.S.C. 3729-3733), which prohibits submission of false or fraudulent claims for payment to the Federal Government.

#### **Article VII. Arbitration**

If any misunderstanding or dispute arises between the Company and FEMA with reference to any factual issue under any provisions of this Arrangement or with respect to FEMA's nonrenewal of the Company's participation, other than as to legal liability under or interpretation of the Standard Flood Insurance Policy, such misunderstanding or dispute may be



submitted to arbitration for a determination that will be binding upon approval by FEMA. The Company and FEMA may agree on and appoint an arbitrator who will investigate the subject of the misunderstanding or dispute and make a determination. If the Company and FEMA cannot agree on the appointment of an arbitrator, then two arbitrators will be appointed, one to be chosen by the Company and one by FEMA.

The two arbitrators so chosen, if they are unable to reach an agreement, must select a third arbitrator who must act as umpire, and such umpire's determination will become final only upon approval by FEMA. The Company and FEMA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FEMA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

#### **Article VIII. Errors and Omissions**

- A. In the event of negligence by the Company that has not resulted in litigation but has resulted in a claim against the Company, FEMA will not consider reimbursement of the Company for costs incurred due to that negligence unless the Company takes all reasonable actions to rectify the negligence and to mitigate any such costs as soon as possible after discovery of the negligence. The Company may choose not to seek reimbursement from FEMA.
- B. If the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment may not be paid by the Company from any portion of the premium and any funds derived from any Federal funds deposited in the bank account described in Article III.E.1. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any

insured under the circumstances described above.

#### **Article IX. Officials Not to Benefit**

No Member or Delegate to Congress, or Resident Commissioner, may be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision may not be construed to extend to this Arrangement if made with a corporation for its general benefit.

#### **Article X. Offset**

At the settlement of accounts, the Company and FEMA have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and FEMA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

#### **Article XI. Equal Opportunity**

A. Age Discrimination Act of 1975. The Company must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (42 U.S.C. 6101 *et seq.*) which

prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

- B. Americans with Disabilities Act. The Company must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Public Law 101-336 (42 U.S.C. 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.
- C. Civil Rights Act of 1964- Title VI. The Company must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Department of Homeland Security implementing regulations for the Act are found at 6 CFR part 21 and 44 CFR part 7.
- D. Civil Rights Act of 1968. The Company must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex as implemented by the U.S. Department of Housing and Urban Development at 24 CFR part 100.
- E. Rehabilitation Act of 1973. The Company must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

## **Article XII. Access to Books and Records**

- A. Audits. FEMA, the Department of Homeland Security, and the Comptroller General of the

United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. FEMA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

B. Nondisclosure by FEMA. FEMA, to the extent permitted by law and regulation, will safeguard and treat information submitted or made available by the Company pursuant to this Arrangement as confidential where the information has been marked “confidential” by the Company and the Company customarily keeps such information private or closely-held. To the extent permitted by law and regulation, FEMA will not release such information to the public pursuant to a Freedom of Information Act (FOIA) request, 5 U.S.C. 552, without prior notification to the Company. FEMA may transfer documents provided by the Company to any department or agency within the Executive Branch or to either house of Congress if the information relates to matters within the organization’s jurisdiction. FEMA may also release the information submitted pursuant to a judicial order from a court of competent jurisdiction.

C. Nondisclosure by Company.

1. In general. The Company, to the extent permitted by law, must safeguard and treat information submitted or made available by FEMA pursuant to this Arrangement as confidential where the information has been marked or identified as “confidential” by FEMA and FEMA customarily keeps such information private or closely-held. The

Company may not disclose such confidential information to a third-party without the express written consent of FEMA or as otherwise required by law.

2. Other protections. Article XII.C.1 shall not be construed as to limit the effect of any other requirement on the Company to protect information from disclosure, including a joint defense agreement or under the Privacy Act.

### **Article XIII. Compliance with Act and Regulations**

This Arrangement and all policies of insurance issued pursuant thereto are subject to Federal law and regulations.

### **Article XIV. Relationship Between the Parties and the Insured**

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, that is, to ensure that any taxpayer funds are accounted for and appropriately expended. The Company is a fiscal agent of the Federal Government, but is not a general agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any policy issued pursuant hereto, such that the Federal Government is not a proper party to any lawsuit arising out of such policies.

Authority: 42 U.S.C. 4071, 4081; 44 CFR 62.23.

---

**Jeffrey Jackson,**

*Assistant Administrator (Acting) for Federal Insurance,*

*Federal Emergency Management Agency.*

[FR Doc. 2023-03895 Filed: 2/24/2023 8:45 am; Publication Date: 2/27/2023]